

REMARKS/ARGUMENTS

The Applicant thanks the Examining Attorney for the Office Action mailed on February 18, 2005, as well as for the telephone conference of May 4, 2005 regarding the above-captioned application. The Applicant submits these amendments and remarks in response to the February 18, 2005 Office Action. After entry of this Amendment, claims 1-19 are pending in this application.

In the Office Action of February 18, 2005, the Examiner first objected to the drawings because the figure numbers do not correspond to the figure numbers in the specification. Specifically, the Examiner stated that there is no brief description for FIGS. 4A and 4B in the specification. The Examiner requested corrected drawing sheets in compliance with 37 C.F.R. 1.121(d) to reply to the Office Action to avoid abandonment of the application.

In response to this objection, Applicant has amended the written specification of the application to disclose a brief description for FIG. 4A. Upon entry of this Amendment, the Brief Description of the Drawings includes descriptions corresponding to each of the drawing figures presently included in the application.

The Examiner next objected to the drawings under 37 C.F.R. 1.83(a). The Examiner stated that the drawings must show every feature of the invention specified in the claims. Therefore, the visual target indicia as required in claim 11 and a ribbon fabric intertwined within said elastic mesh netting as required in claim 18 must be shown or the features canceled from the claims. The Examiner reminded the Applicant that no new matter should be entered. The Examiner again invited the Applicant to submit corrected drawing sheets in compliance with 37 C.F.R. 1.121(d) in response to this objection.

In response to this objection, Applicant directs the Examiner's attention to lines 5-12 of page 6 of the original specification wherein a visual target indicia 42 is disclosed. Additionally, this

portion of the specification states that “a visual target indicia 42 may be included in the elastic mesh netting 40 by weaving a ribbon fabric through the elastic mesh netting 40 to form a substantially rectangular configuration.” Additionally, Applicant directs the Examiner’s attention to drawing FIGS. 1-3 included in the drawing replacement sheets submitted on January 31, 2005 in which both the visual target indicia 42 and that visual target indicia 42 is a ribbon fabric weaved through the elastic mesh netting 40 are disclosed.

The Examiner next reminded the Applicant of the proper language and format for an Abstract of the disclosure. In response to this reminder, Applicant has submitted an amended Abstract to address these concerns. The amended Abstract is within the required range of 50-150 words.

The Examiner next objected to the disclosure because of the informality of there not being a brief description for FIGS. 4A and 4B corresponding to the figures. In response, Applicant has added a brief description for FIG. 4A. Applicant notes that, consistent with the drawing figures, there exists only a FIG. 4 and FIG. 4A. There is no FIG. 4B. Applicant believes that both the drawings and the specification properly correspond by disclosing FIGS. 1, 2, 3, 4, and 4A. 37 C.F.R. § 1.84(a) does no prohibit this arrangement of identifying drawing figures.

The Examiner next objected to the disclosure as inconsistently referencing “the support structures 18” where only one structure has been shown and described. In response to this objection, Applicant has amended the relevant portions of the specification to clarify and correct this potential ambiguity.

The Examiner next rejected claim 11 under 35 U.S.C. 112, Second Paragraph as being indefinite for failing to particularly point out and distinctly claim the subject matter which the

Applicant regards as the invention. The Examiner stated that it is unclear if “a target” in claim 11 is the same target as in claims 10 and 9 or if a different target is being claimed and defined.

In response to this rejection, Applicant has amended claim 9 as defining a first target.

Applicant has further amended claim 11 as defining a second target. Applicant believes that these amendments appropriately address and clarify the indefiniteness on which the Examiner has based the rejection of claim 11. Applicant therefore respectfully requests that the Examiner withdraw the rejection against claim 11 under 35 U.S.C. § 112, Second Paragraph.

The Examiner next rejected claims 1-4, 7-11, 13, and 15-18 under 35 U.S.C. 102(b) as being anticipated by Gery, United States Patent No. 5,333,856. Regarding claim 1, the Examiner stated that Gery discloses a throwing and catching training apparatus comprising an upright, substantially rigid target panel (backstop member 30); and at least one bumper (the broadest reasonable interpretation of *bumper* would include obscuring members 50) connected to said target panel (backstop member 30), and said at least one bumper adaptable to deflect a thrown projectile in a random direction (*See FIG. 5*). Regarding claim 2, the Examiner stated that Gery further shows at least one support structure (framework unit) connected to said target panel (backstop member 30) for supporting said target panel in an upright position. Regarding claim 3, the Examiner stated that Gery shows said target panel (backstop member 30) having a cut-out portion (rectangular opening 37) extending through said target panel for further defining a target. Regarding claim 4, the Examiner stated that Gery shows an elastic material (the broadest reasonable interpretation of elastic material would include elongated rectangular sheet 41 made from a flexible material 42) connected to said target panel (backstop member 30) and extending across said cutout portion of said target panel, and said elastic material adaptable to spring a thrown projectile in a reverse direction when said thrown projectile engages said elastic material (when the ball impacts the sheet, it springs back outwardly

and drops down in the pouch). Regarding claim 7, the Examiner noted the rejection for claim 1.

Additionally, the Examiner noted that Gery shows a plurality of elastomeric bumpers which are releasably connected (upper and lower rectangular panels 51). Regarding claim 8, the Examiner noted the rejection for claim 2. Regarding claim 9, the Examiner noted the rejection for claim 3.

Regarding claim 10, the Examiner noted the rejection for claim 4. Regarding claim 11, the Examiner stated that Gery shows a visual target indicia (the obscuring members 50) connected to said elastic mesh netting (*See Col. 2, lines 31-36*) for further defining a target. Regarding claim 13, the Examiner noted the rejection for claims 7 and 8. Regarding claim 15, the Examiner stated that Gery shows said bumpers (rectangular panel 51) being equally spaced on said target panel (*See FIG. 1*). Regarding claim 16, the Examiner stated that Gery shows said target panel (backstop member 30) having a substantially rectangular cutout portion (elongated rectangular opening 37) extending through said target panel for further defining a target (*See FIG. 5*). Regarding claim 17, the Examiner noted the rejection for claim 4.

In response to these rejections, Applicant has amended claims 1, 7, and 13 to remove the modifier “substantially” from the phrase “substantially rigid” in claiming a target panel. Gery does not disclose the use of an upright, rigid target panel. Therefore, Applicant respectfully requests that the Examiner withdraw the rejections against claims 1, 7, and 13 based upon Gery under 35 U.S.C. § 102(b). Furthermore, since claims 2-4 depend from claim 1, claims 8-11 depend from claim 7, and claims 15-18 depend from claim 13, claims 2-4, 8-11, and 15-18 are also not anticipated by Gery under 35 U.S.C. § 102(b). Applicant respectfully requests that the Examiner withdraw the rejections of these claims based upon the Gery reference in light of the amendments to claims 1, 7, and 13.

The Examiner next rejected claims 1 and 6 under 35 U.S.C. § 102(e) as being anticipated by Hoepelman, United States Patent No. 6,843,478. Regarding claim 1, the Examiner stated that

Hoepelman discloses a throwing and catching training apparatus comprising an upright, substantially rigid target panel (tubular wall 16); and at least one bumper (protrusions 30) connected to said target panel (16), and said at least one bumper adaptable to deflect a thrown projectile in a random direction (*See FIG. 5*). Regarding claim 6, the Examiner stated that Hoepelman shows said at least one bumper having a substantially circular, dome-shaped head extending away from said target panel and adapted to deflect the thrown projectile in a random direction (*See FIG. 1*).

In response to the Examiner's rejection of claims 1 and 6 under 35 U.S.C. § 102(e) to Hoepelman, the Applicant has amended claim 1 to claim an upright, rigid, and substantially planar target panel. Hoepelman does not disclose an upright, rigid, and substantially planar target panel. Therefore, Hoepelman does not anticipate claim 1 as amended. Further, since claim 6 depends from claim 1, Hoepelman does not anticipate claim 6 in light of the amendment to claim 1. Applicant respectfully requests that the Examiner withdraw the rejections of claims 1 and 6 on the basis of Hoepelman under 35 U.S.C. § 102(e).

The Examiner next rejected claims 5 and 19 under 35 U.S.C. § 103(a) as being unpatentable over Gery, United States Patent No. 5,333,856. Regarding claim 5, the Examiner stated that Gery does not expressly disclose the specific material the pair of obscuring members 50 (bumpers) is made from. At the time the invention was made, it would have been an obvious matter of design choice to a person of ordinary skill in the art to form the obscuring members from an elastomeric material, because Applicant has not disclosed that forming the obscuring members from an elastomeric material, provides an advantage, is used for a particular purpose, or solves a stated problem. The Examiner stated that one of ordinary skill in the art would have expected Applicant's invention to perform equally well with either the obscuring member taught by Gery or the claimed bumper because both bumpers perform the same function of randomly redirecting the ball. The

Examiner concluded that it would have been an obvious matter of design choice to modify Gery to obtain the invention as specified in claim 5.

In response to this rejection, Applicant first notes that it has amended claim 1 to claim “an upright, rigid, and substantially planar target panel.” As discussed elsewhere, Gery does not disclose an upright, rigid, and substantially planar target panel. Since claim 5 depends from claim 1, Applicant asserts that claim 5 is not obvious in light of Gery. Furthermore, the use of an elastomeric material for the obscuring members 50 in the Gery reference as a matter of design choice would not result in an anticipation of the Applicant’s present invention. Gery teaches that “the backstop unit (12) comprises a generally rectangular backstop member (30) fabricated from either a flaccid sheet of material (31) such as canvas as shown in FIGS. 1 and 3, or as a relatively loosely draped netting material (32) such as made from nylon, gut, cord, or string.” (Col. 2, lines 31-36.) Gery goes on to note that obscuring members (50) are fastened on the flaccid or loosely draped backstop member (30). (Col. 2, line 67 - Col. 3, line 7.) Since the obscuring members (50) are fastened to what is taught by Gery to be either a flaccid sheet or loosely draped netting material, it is impossible for Gery to anticipate the use of an elastomeric material as a bumper “so that the thrown projectile will bounce off the bumpers (14) and be deflected back to the user,” as described in lines 7-8 of page 7 of the original specification in the instant application. Simply put, the flaccid sheet or loose netting disclosed and described by Gery would not provide for the elastic return of a thrown projectile. Furthermore, regardless of the material forming obscuring members (50) of the Gery disclosure, since those members are connected to a flaccid sheet or loose netting, they, in turn, would be impotent to elastically return a thrown projectile. In contrast, the present invention discloses a rigid or substantially rigid target panel 12 supporting the elastomeric bumpers 14. Since these elastomeric bumpers are mounted on a rigid surface, contact made by a thrown projectile would result in a

substantially elastic collision, wherein the elastomeric material would elastically return the energy of the thrown projectile to the projectile with a force substantially equal to and opposite in direction of the force with which the thrown projectile impacts the elastomeric bumper. Thus, even if the obscuring members (50) of the Gery disclosure were constructed of an elastomeric material, the Gery apparatus so constructed would fail to return a thrown projectile back to the user. This is a substantially different result than what occurs when a thrown projectile contacts an elastomeric bumper 14 of the present invention, wherein the thrown projectile *is* returned to the user. On these bases, the Examiner should withdraw the rejection of claim 5 under 35 U.S.C. § 103(a) as being unpatentable over Gery.

The Examiner next rejected claim 19 under 35 U.S.C. § 103(a) as being unpatentable over Gery. The Examiner stated that Gery does not expressly disclose the pair of support members (brace elements 23) as releasably connected to opposite sides of said target panel (backstop member 30). The Examiner stated that it would have been obvious to one having ordinary skill in the art at the time the invention was made to have made Gery's brace elements releasably attachable, in order to make the apparatus readily transportable, since it has been held that constructing a formerly integral structure in various elements involves only routine skill in the art. The Examiner cited Nerwin v. Erlichman, 168 USPQ 177, 179 in support.

In response to this rejection, the Applicant has amended the language of claim 13, from which claim 19 depends, to have an upright, rigid target panel. Gery does not disclose an upright, rigid target panel. Therefore, Gery does not anticipate claim 19 under 35 U.S.C. § 103(a). Additionally, Gery teaches that "the brace elements (23) cooperate with the leg (24) of the U-shaped base framework member (21) to provide rigidity and support to the framework unit (11)." (Col. 2, lines 27-30.) Applicant respectfully notes that the disclosed support structures 18 of the present

invention have no element analogous to the leg (24) of the Gery invention. Since Gery discloses this leg (24) as a necessary element “to provide rigidity and support to the framework unit (11),” it would not have been obvious to one having ordinary skill in the art at the time the invention was made to provide a pair of support members releasably connected to opposite sides of the target panel. For this reason, as well, Applicant respectfully requests that the Examiner withdraw the rejection against claim 19 based upon 35 U.S.C. § 103(a) as being unpatentable over Gery.

The Examiner next rejected claims 7, 12, 13, and 18 under 35 U.S.C. § 103(a) as being unpatentable over Macosko, United States Patent No. 4,497,485. Regarding claim 7, the Examiner stated that Macosko discloses a throwing and catching training apparatus comprising an upright, substantially rigid target panel (mesh netting 26); and a plurality of bumpers (the broadest reasonable interpretation of *bumper* would include target discs 20) releasably (fastening buttons 6) connected to said target panel (mesh netting 26) adaptable to deflect a thrown projectile in a random direction (See FIG. 1). The Examiner stated that Macosko does not disclose expressly the specific material the target discs are made from. The Examiner asserted that at the time the invention was made, it would have been obvious matter of design choice to a person of ordinary skill in the art to form the discs from an elastomeric material, because Applicant has not disclosed that forming the discs from an elastomeric material provides an advantage, is used for a particular purpose, or solves a stated problem. The Examiner went on to state that one of ordinary skill in the art would have expected Applicant’s invention to perform equally well with either the discs taught by Macosko or the claimed discs because both discs perform the same function of randomly redirecting the balls. The Examiner concluded that it would have been an obvious matter of design choice to modify Macosko to obtain the invention as specified in claim 7.

In response, the Applicant notes that it has amended claim 7 to claim “an upright, rigid target panel.” Since Macosko does not disclose an upright, rigid target panel, claim 7 is not anticipated by Macosko under 35 U.S.C. § 103(a). In addition, Macosko teaches the use of target discs (20) for the purpose of operating as “prominent target indicia” (Col. 3, lines 64-65) in order to improve accuracy. This is markedly different than the bumpers 14 as disclosed and claimed in the present invention, which are used in order to randomize a ball return trajectory. Thus, the particular material out of which the discs (20) in Macosko are made are immaterial, as it would not have been obvious to use such discs for the purposes disclosed and described in the present invention. For this reason, as well, the Examiner should withdraw the rejection against claim 7 under 35 U.S.C. § 103(a) as being unpatentable over Macosko.

The Examiner next rejected claim 12 saying that Macosko shows said bumpers (target discs 20) further comprising a stem releasably connected to said target panel (Macosko shows that the target discs 20 are attached to the target panel by means of fastening buttons 6 which have flexible retaining fingers 44 that may be snapped into retaining position, although not explicitly stated, but well known, in order for this process to happen the target discs must have an extension or stem for receiving the fastening button); and a substantially circular, dome-shaped head integral with and extending from said stem (best seen in FIG. 2), wherein said dome-shaped head extends away from said target panel and is adaptable to deflect the thrown projectile in a random direction.

In response to this rejection, Applicant notes that it has amended claim 7, from which claim 12 depends, to include “an upright, rigid, target panel.” Macosko does not disclose an upright, rigid target panel. Therefore, Macosko does not anticipate claim 12 under 35 U.S.C. § 103(a) in light of the amendment to claim 7. Furthermore, the Applicant respectfully disagrees with the Examiner’s analysis in asserting that “the target discs must have an extension or stem for receiving the fastening

button.” Such a structure has no support in the Macosko specification and no suggestion or intimation that such a structure might exist. Thus, Applicant respectfully asserts that the Examiner has failed to make a *prima facie* case of obviousness as failing to include, first of all, a suggestion to modify the reference and, secondly, that the reference teaches or suggests all of the claim limitations. MPEP § 2142. For this reason, as well, Applicant respectfully requests that the Examiner withdraw the rejection against claim 12 based upon 35 U.S.C. § 103(a) as being unpatentable over Macosko.

The Examiner next rejected claim 13 as being unpatentable under 35 U.S.C. § 103(a) over Macosko. The Examiner noted the rejection for claim 7. The Examiner further stated that Macosko shows a support structure (*See FIG. 2*) for supporting said target panel in an upright position. In response to this rejection, Applicant states that it has amended claim 13 to include an upright, rigid target panel. Applicant notes that Macosko does not disclose an upright, rigid target panel. Additionally, Applicant refers the Examiner to Applicant’s argument above with respect to claim 7 and Macosko’s failure to teach the use of elastomeric material for use in conjunction with the bumpers of the present invention. For these reasons, Applicant respectfully requests that the Examiner withdraw the rejection against claim 13 under 35 U.S.C. § 103(a) as being unpatentable over Macosko.

Finally, the Examiner rejected claim 18 under 35 U.S.C. § 103(a) as being unpatentable over Macosko. The Examiner stated that Macosko shows a ribbon fabric (the broadest reasonable interpretation of *a ribbon fabric* would include large cords 28) intertwined within said elastic mesh netting (mesh netting 26) for further defining said target (*See FIG. 3*). In response, Applicant notes that it has amended claim 13, from which claim 18 depends, to include an upright, rigid target panel. Applicant notes that Macosko does not disclose an upright, rigid target panel. As such, Macosko

HHJ-100-B

17E05

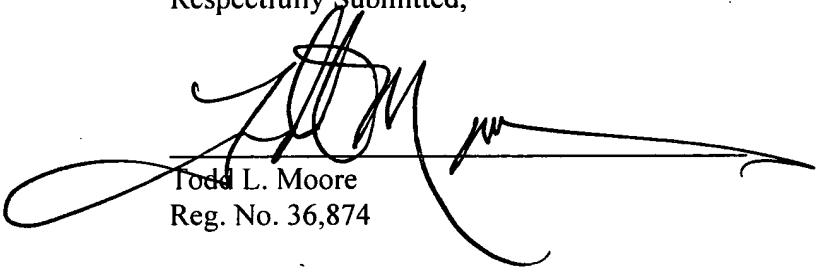
does not anticipate claim 18 under 35 U.S.C. § 103(a) in light of the amendment to claim 13, from which claim 18 depends.

In addition to the amendments disclosed and described above, Applicant has further amended the claims in the above-captioned application in order to more distinctly point out and claim what the Applicant regards as his invention.

For the foregoing reasons and in light of the amendments, Applicant respectfully requests that the Examiner reconsider and withdraw the rejections and objections to the above-noted claims and allow the claims to proceed to issue.

The Examiner is welcome to contact Applicant's undersigned Attorney with any questions regarding this paper.

Respectfully Submitted,



Todd L. Moore
Reg. No. 36,874

DATED: May 16, 2005